

**ENTERED**

January 11, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

WILBERT JOHNSON, JR., SPIN #01307601, §

*Plaintiff,* §

v. §

HCSO, *ET AL.*, §

*Defendants.* §

CIVIL ACTION No. H-19-0072

**ORDER OF DISMISSAL**

Wilbert Johnson, Jr., Harris County Jail SPN # 01307601, proceeding *pro se* and *in forma pauperis*, filed this section 1983 lawsuit against the following five defendants: the Honorable Susan Brown, presiding judge of the 185th Judicial District Court of Harris County, Texas; Adam Brown, plaintiff's defense attorney; an assistant Harris County district attorney; the Harris County Sheriff's Jail; and the Harris County Constable Office Precinct 4. He seeks a compilation of habeas and civil relief, including dismissal of his pending felony charges for aggravated assault with a deadly weapon, \$100 million in damages, payment of medical and therapy bills, "look into other's rights who has been violated, change the bonding system, investigate more before charging or arresting individuals on accusation of complaints, stop the suffering, illegal incarceration." (Docket Entry No. 1, p. 5.)

Because plaintiff is an inmate proceeding *in forma pauperis*, the Court is required by the Prison Litigation Reform Act to scrutinize the complaint and dismiss the case, in

whole or in part, if it determines that the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). After reviewing all of the pleadings and the applicable law, the Court concludes that this case must be DISMISSED as malicious.

### *Analysis*

This lawsuit stands as plaintiff's third section 1983 lawsuit challenging his current pretrial detention and pending criminal charges against these same five defendants. In *Johnson v. Harris County Sheriff's Jail*, C.A. No. H-18-1768 (S.D. Tex.), plaintiff sued four of the five defendants named herein for illegal arrest and false imprisonment, and requested habeas relief and monetary damages. On June 1, 2018, the Court stayed, abated and closed the lawsuit pending resolution of plaintiff's criminal charges. Shortly thereafter, plaintiff filed his second civil lawsuit, naming as defendant the Honorable Susan Brown. *Johnson v. Brown*, C.A. No. H-18-2414 (S.D. Tex.). On July 16, 2018, the Court dismissed the lawsuit as frivolous and for failure to state a claim, noting that plaintiff's claims against Judge Brown were barred by judicial immunity.

In the instant lawsuit, plaintiff again names these five defendants and raises substantially the same or similar claims as raised in the two earlier lawsuits. Consequently, this lawsuit constitutes a malicious lawsuit and must be dismissed pursuant to 28 U.S.C. § 1915(e)(2). See *Willis v. Bates*, 78 F. App'x 929, 2003 WL 22427405 (5th Cir. 2003) (holding that a district court may dismiss a lawsuit as malicious if it arises from

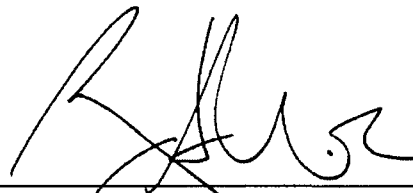
the same series of events and alleges many of the same facts as an earlier suit); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (same).

### ***Conclusion***

This lawsuit is DISMISSED WITH PREJUDICE under 28 U.S.C. § 1915(e)(2) as malicious. Any and all pending motions are DENIED AS MOOT. This dismissal counts as a “strike” under 28 U.S.C. § 1915(g), and constitutes plaintiff’s second strike. *See Johnson v. Brown*, C.A. No. H-18-2414 (S.D. Tex. July 16, 2018) (dismissed as frivolous and for failure to state a claim). Should plaintiff acquire a third strike, he will be barred from proceeding *in forma pauperis* in federal district and appellate courts pursuant to section 1915(g).

The Clerk of Court is directed to provide a copy of this order to plaintiff. The Clerk will also provide a copy of this order by regular mail or e-mail to: (1) the TDCJ–Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711; and (2) Manager of the Three-Strikes List for the Southern District of Texas, at Three Strikes@txs.uscourts.gov.

Signed at Houston, Texas on January 10, 2019.

A handwritten signature in black ink, appearing to read 'Gray H. Miller', is written over a horizontal line.

Gray H. Miller  
Senior United States District Judge